

## ARTICLE 10

388.1701 Eligibility to receive state aid; filing certified and sworn copy of enrollment; failure to file; withholding state aid falsification; minimum days and hours of pupil instruction; forfeiture; certification; strikes or teachers' conferences; rules; days not counted as days of pupil instruction; alternative scheduling program for pupils in kindergarten; waiver; certification of planned number of days and hours of pupil instruction; conditions requiring forfeiture; guidelines for providing minimum number of hours of instruction; application; waiver for alternative education program.

Sec. 101. (1) To be eligible to receive state aid under this act, not later than the fifth Wednesday after the pupil membership count day and not later than the fifth Wednesday after the supplemental count day, each district superintendent through the secretary of the district's board shall file with the intermediate superintendent a certified and sworn copy of the number of pupils enrolled and in regular daily attendance in the district as of the pupil membership count day and as of the supplemental count day, as applicable, for the current school year. In addition, a district maintaining school during the entire year, as provided under section 1561 of the revised school code, MCL 380.1561, shall file with the intermediate superintendent a certified and sworn copy of the number of pupils enrolled and in regular daily attendance in the district for the current school year pursuant to rules promulgated by the state board. Not later than the seventh Wednesday after the pupil membership count day and not later than the seventh Wednesday after the supplemental count day, the intermediate district shall transmit to the department the data filed by each of its constituent districts. If a district fails to file the sworn and certified copy with the intermediate superintendent in a timely manner, as required under this subsection, the intermediate district shall notify the department and state aid due to be distributed under this act shall be withheld from the defaulting district immediately, beginning with the next payment after the failure and continuing with each payment until the district complies with this subsection. If an intermediate district fails to transmit the data in its possession in a timely and accurate manner to the department, as required under this subsection, state aid due to be distributed under this act shall be withheld from the defaulting intermediate district immediately, beginning with the next payment after the failure and continuing with each payment until the intermediate district complies with this subsection. If a district or intermediate district does not comply with this subsection by the end of the fiscal year, the district or intermediate district forfeits the amount

withheld. A person who willfully falsifies a figure or statement in the certified and sworn copy of enrollment shall be punished in the manner prescribed by section 161.

(2) To be eligible to receive state aid under this act, not later than the twenty-fourth Wednesday after the pupil membership count day and not later than the twenty-fourth Wednesday after the supplemental count day, an intermediate district shall submit to the department, in a form and manner prescribed by the department, the audited enrollment and attendance data for the pupils of its constituent districts and of the intermediate district. If an intermediate district fails to transmit the audited data as required under this subsection, state aid due to be distributed under this act shall be withheld from the defaulting intermediate district immediately, beginning with the next payment after the failure and continuing with each payment until the intermediate district complies with this subsection. If an intermediate district does not comply with this subsection by the end of the fiscal year, the intermediate district forfeits the amount withheld.

(3) Each district shall provide the required minimum number of days and hours of pupil instruction under section 1284 of the revised school code, MCL 380.1284. Except as otherwise provided in this act, a district failing to hold the required minimum number of days of pupil instruction shall forfeit from its total state aid allocation for each day of failure an amount determined by applying a ratio of the number of days the district was in noncompliance in relation to the required minimum number of days. Except as otherwise provided in this act, a district failing to comply with the required minimum hours of pupil instruction shall forfeit from its total state aid allocation an amount determined by applying a ratio of the time duration the district was in noncompliance in relation to the required minimum number of hours. A district failing to meet both the minimum number of days of pupil instruction requirement and the minimum number of hours of pupil instruction requirement shall be penalized only the higher of the 2 amounts calculated under the forfeiture provisions of this subsection. Not later than August 1, the board of each district shall certify to the department the number of days and hours of pupil instruction in the previous school year. If the district did not hold at least 180 days and the required minimum number of hours of pupil instruction, the deduction of state aid shall be made in the following fiscal year from the first payment of state school aid. A district is not subject to forfeiture of funds under this subsection for a fiscal year in which a forfeiture was already imposed under subsection (7). Days lost because of strikes or teachers' conferences shall not be counted as days of pupil instruction. A district not having at least 75% of the district's membership in attendance on any day of pupil instruction shall receive state aid in that proportion of 1 divided by the required minimum number of days of pupil instruction that the actual percent

of attendance bears to the specified percentage. The state board shall promulgate rules for the implementation of this subsection.

(4) The first 2 days for which pupil instruction is not provided because of conditions not within the control of school authorities, such as severe storms, fires, epidemics, or health conditions as defined by the city, county, or state health authorities, shall be counted as days of pupil instruction. In addition, for 1997-98 only, the department may count as days of pupil instruction up to 6 additional days for which pupil instruction is not provided in a district after May 28, 1998 because damage or electrical outages resulting from severe storms prevented the district from providing instruction and up to 2 additional days for which pupil instruction is not provided in a district after June 3, 1998 because a bomb threat prevented the district from providing instruction. Subsequent such days shall not be counted as days of pupil instruction.

(5) A district shall not forfeit part of its state aid appropriation because it adopts or has in existence an alternative scheduling program for pupils in kindergarten if the program provides at least the number of hours required for a full-time equated membership for a pupil in kindergarten as provided under section 6(4).

(6) Upon application by the district for a particular fiscal year, the state board may waive the minimum number of days of pupil instruction requirement of subsection (3) for a district if the district has adopted an experimental school year schedule in 1 or more buildings in the district if the experimental school year schedule provides the required minimum number or more hours of pupil instruction and is consistent with all state board policies on school improvement and restructuring. If a district applies for and receives a waiver under this subsection and complies with the terms of the waiver, for the fiscal year covered by the waiver the district is not subject to forfeiture under this section of part of its state aid allocation for the specific building or program covered by the waiver.

(7) Not later than April 15 of each fiscal year, the board of each district shall certify to the department the planned number of days and hours of pupil instruction in the district for the school year ending in the fiscal year. In addition to any other penalty or forfeiture under this section, if at any time the department determines that 1 or more of the following has occurred in a district, the district shall forfeit in the current fiscal year beginning in the next payment to be calculated by the department a proportion of the funds due to the district under this act that is equal to the proportion below the required minimum number of days and hours of pupil instruction, as specified in the following:

(a) The district fails to operate its schools for at least the required minimum number of days and hours of pupil instruction in a school year, including days counted under subsection (4).

(b) The board of the district takes formal action not to operate its schools for at least the required minimum number of days and hours of pupil instruction in a school year, including days counted under subsection (4).

(8) In providing the minimum number of hours of pupil instruction required under section 1284 of the revised school code, MCL 380.1284, a district shall use the following guidelines, and a district shall maintain records to substantiate its compliance with the following guidelines:

(a) Except as otherwise provided in this subsection, a pupil must be scheduled for at least the required minimum number of hours of instruction, excluding study halls, or at least the sum of 90 hours plus the required minimum number of hours of instruction, including up to 2 study halls.

(b) The time a pupil is assigned to any tutorial activity in a block schedule may be considered instructional time, unless that time is determined in an audit to be a study hall period.

(c) A pupil in grades 9 to 12 for whom a reduced schedule is determined to be in the individual pupil's best educational interest must be scheduled for a number of hours equal to at least 80% of the required minimum number of hours of pupil instruction to be considered a full-time equivalent pupil.

(d) If a pupil in grades 9 to 12 who is enrolled in a cooperative education program or a special education pupil cannot receive the required minimum number of hours of pupil instruction solely because of travel time between instructional sites during the school day, that travel time, up to a maximum of 2-1/2 hours per school week, shall be considered to be pupil instruction time for the purpose of determining whether the pupil is receiving the required minimum number of hours of pupil instruction. However, if a district demonstrates to the satisfaction of the department that the travel time limitation under this subdivision would create undue costs or hardship to the district, the department may consider more travel time to be pupil instruction time for this purpose.

(e) For the 1997-98 school year only, if a district operates an elementary school that is located on an island and provides some pupil instruction for pupils enrolled in that elementary school at 1 or more school buildings operated by the district that are not located on the island, the travel time for travel for those pupils between the elementary school located on the island and the other school building or buildings, up to a maximum of 1-1/2 hours per school week, shall be considered to be pupil instruction time for those pupils for the purpose of determining whether those pupils are receiving the required minimum number of hours of pupil instruction.

(9) The department shall apply the guidelines under subsection (8) in calculating the full-time equivalency of pupils.

(10) Upon application by the district for a particular fiscal year, the state board may waive for a district the minimum number of days and hours of pupil instruction requirement of subsection (3) for a department-approved alternative education program. If a district applies for and receives a waiver under this subsection and complies with the terms of the waiver, for the fiscal year covered by the waiver the district is not subject to forfeiture under this section for the specific program covered by the waiver.

**History:**1979, Act 94, Eff. Oct. 1, 1979;—Am. 1983, Act 169, Eff. Oct. 1, 1983;—Am. 1984, Act 239, Eff. Oct. 1, 1984;—Am. 1985, Act 110, Eff. Oct. 1, 1985;—Am. 1986, Act 212, Eff. Oct. 1, 1986;—Am. 1986, Act 298, Imd. Eff. Dec. 22, 1986;—Am. 1989, Act 197, Eff. Oct. 1, 1989;—Am. 1990, Act 207, Eff. Oct. 1, 1990;—Am. 1991, Act 118, Imd. Eff. Oct. 11, 1991;—Am. 1992, Act 142, Imd. Eff. July 15, 1992;—Am. 1992, Act 148, Eff. Oct. 1, 1992;—Am. 1993, Act 175, Eff. Oct. 1, 1993;—Am. 1993, Act 336, Eff. Oct. 1, 1994;—Am. 1994, Act 283, Eff. Oct. 1, 1994;—Am. 1995, Act 130, Imd. Eff. June 30, 1995;—Am. 1996, Act 180, Imd. Eff. Apr. 19, 1996;—Am. 1996, Act 300, Eff. Oct. 1, 1996;—Am. 1997, Act 93, Eff. Oct. 1, 1997;—Am. 1997, Act 142, Imd. Eff. Nov. 19, 1997;—Am. 1998, Act 339, Imd. Eff. Oct. 13, 1998.

**Compiler's note:**The last sentence of subsection (4), as amended by Act 180 of 1996, which provided "However, for 1995-96 only, for a school district at or above townline 16, the first 5 days for which pupil instruction is not provided because of conditions described in this subsection shall be counted as days of pupil instruction." was vetoed by the governor on April 22, 1996.

**Administrative rules:**R 340.1 et seq. of the Michigan Administrative Code.

388.1701aRepealed.1993, Act 336, Eff. Oct. 1, 1994.

**Compiler's note:**The repealed section pertained to extended school year.

388.1702Deficit budget or operating deficit prohibited; release of state aid payments; report; amount of permissible deficit; monthly monitoring report; plan to eliminate deficit; district considered to have incurred deficit.

Sec. 102. (1) A district or intermediate district receiving money under this act shall not adopt or operate under a deficit budget, and a district or intermediate district shall not incur an operating deficit in a fund during a school fiscal year. A district or intermediate district having an existing deficit or which incurs a deficit shall not be allotted or paid a further sum under this act until the district or intermediate district submits to the department for approval a budget for the current school fiscal year and a plan to eliminate the district's or intermediate district's deficit not later than the end of the second school fiscal year after the deficit was incurred. Withheld state aid payments shall be released after the department approves the deficit reduction plan and ensures that the budget for the current school fiscal year is balanced.

(2) Not later than March 1 of each year, the department shall prepare a report of deficits incurred by districts and intermediate districts in the immediately preceding fiscal year and the progress made in reducing those deficits and submit the report to the standing committees of the legislature responsible for K-12 education legislation, the appropriations subcommittees of the legislature responsible for K-12 education appropriations, the house and senate

fiscal agencies, the state treasurer, and the department of management and budget. The department shall also submit interim reports concerning district and intermediate district deficits as necessary.

(3) The amount of the permissible deficit for each school fiscal year shall not exceed the amount of state aid reduced by an executive order during that school fiscal year.

(4) A district or intermediate district with an existing deficit or which incurs a deficit shall submit to the department a monthly monitoring report on revenue and expenditures in a form and manner prescribed by the department.

(5) If a district or intermediate district is not able to comply with the provisions of this section, the district or intermediate district shall submit to the department a plan to eliminate its deficit. Upon approval of the plan submitted, the superintendent of public instruction may continue allotment and payment of funds under this act, extend the period of time in which a district or intermediate district has to eliminate its deficit, and set special conditions that the district or intermediate district must meet during the period of the extension.

(6) For the purposes of this section, a district or intermediate district is considered to have incurred an operating deficit if the district or intermediate district incurs any withholding of or financial penalty, other than a temporary delay, against any portion of its total state school aid allocation under this act.

**History:**1979, Act 94, Eff. Oct. 1, 1979;—Am. 1979, Act 138, Imd. Eff. Nov. 7, 1979;—Am. 1980, Act 52, Imd. Eff. Mar. 27, 1980;—Am. 1980, Act 320, Imd. Eff. Dec. 10, 1980;—Am. 1981, Act 36, Eff. Oct. 1, 1981;—Am. 1982, Act 136, Imd. Eff. Apr. 27, 1982;—Am. 1982, Act 276, Imd. Eff. Oct. 5, 1982;—Am. 1983, Act 55, Imd. Eff. May 16, 1983;—Am. 1983, Act 169, Eff. Oct. 1, 1983;—Am. 1984, Act 239, Eff. Oct. 1, 1984;—Am. 1985, Act 110, Eff. Oct. 1, 1985;—Am. 1991, Act 118, Imd. Eff. Oct. 11, 1991;—Am. 1993, Act 175, Eff. Oct. 1, 1993;—Am. 1995, Act 130, Eff. Oct. 1, 1995;—Am. 1996, Act 300, Eff. Oct. 1, 1996.

388.1703Repealed.1993, Act 336, Eff. Oct. 1, 1994.

**Compiler's note:**The repealed section pertained to pupil to teacher ratio.

388.1704Repealed.1996, Act 300, Eff. Oct. 1, 1996.

**Compiler's note:**The repealed section pertained to student portfolios.

388.1704aState assessments to high school pupils.

Sec. 104a. (1) In order to receive state aid under this act, a district shall comply with this section and shall administer state assessments to high school pupils in the subject areas of communications skills, mathematics, science, and, beginning with pupils scheduled to graduate in 2000, social studies. The district shall include on the pupil's high school transcript all of the following:

(a) For each high school graduate who has completed a subject area assessment under this section, the pupil's scaled score on the assessment.

(b) If the pupil's scaled score on a subject area assessment falls within the range required under subsection (2) for a category established under subsection (2), an indication that the pupil has achieved state endorsement for that subject area.

(c) The number of school days the pupil was in attendance at school each school year during high school and the total number of school days in session for each of those school years.

(2) The department shall develop scaled scores for reporting subject area assessment results for each of the subject areas under this section. Subject to approval by the state board, the superintendent of public instruction shall establish 3 categories for each subject area indicating basic competency, above average, and outstanding, and shall establish the scaled score range required for each category. The department shall design and distribute to districts, intermediate districts, and nonpublic schools a simple and concise document that describes these categories in each subject area and indicates the scaled score ranges for each category in each subject area. A district may award a high school diploma to a pupil who successfully completes local district requirements established in accordance with state law for high school graduation, regardless of whether the pupil is eligible for any state endorsement.

(3) The assessments administered for the purposes of this section shall be administered to pupils during the last 30 school days of grade 11. The department shall ensure that the assessments are scored and the scores are returned to pupils, their parents or legal guardians, and districts not later than the beginning of the pupil's first semester of grade 12. Not later than fall 1999, the department shall arrange for those portions of a pupil's assessment that cannot be scored mechanically to be scored in Michigan by persons who are Michigan teachers, retired Michigan teachers, or Michigan school administrators and who have been trained in scoring the assessments. The returned scores shall indicate the pupil's scaled score for each subject area assessment, the range of scaled scores for each subject area, and the range of scaled scores required for each category established under subsection (2). In reporting the scores to pupils, parents, and schools, the department shall provide specific, meaningful, and timely feedback on the pupil's performance on the assessment.

(4) For each pupil who does not achieve state endorsement in 1 or more subject areas, the board of the district in which the pupil is enrolled shall provide that there be at least 1 meeting attended by at least the pupil and a member of the district's staff or a local or intermediate district consultant who is proficient in the measurement and evaluation of pupils. The district may provide the meeting as a group meeting for pupils in similar circumstances. If the pupil is a minor, the district shall invite and encourage the pupil's parent, legal guardian, or person in loco parentis to attend

the meeting and shall mail a notice of the meeting to the pupil's parent, legal guardian, or person in loco parentis. The purpose of this meeting and any subsequent meeting under this subsection shall be to determine an educational program for the pupil designed to have the pupil achieve state endorsement in each subject area in which he or she did not achieve state endorsement. In addition, a district may provide for subsequent meetings with the pupil conducted by a high school counselor or teacher designated by the pupil's high school principal, and shall invite and encourage the pupil's parent, legal guardian, or person in loco parentis to attend the subsequent meetings. The district shall provide special programs for the pupil or develop a program using the educational programs regularly provided by the district unless the board of the district decides otherwise and publishes and explains its decision in a public justification report.

(5) A pupil who wants to repeat an assessment administered under this section may repeat the assessment, without charge to the pupil, in the next school year or after graduation. An individual may repeat an assessment at any time the district administers an applicable assessment instrument or during a retesting period under subsection (7).

(6) The department shall ensure that the length of the assessments used for the purposes of this section and the combined total time necessary to administer all of the assessments, including social studies, are the shortest possible that will still maintain the degree of reliability and validity of the assessment results determined necessary by the department. The department shall ensure that the maximum total combined length of time that schools are required to set aside for administration of all of the assessments used for the purposes of this section, including social studies, does not exceed 8 hours. However, this subsection does not limit the amount of time that individuals may have to complete the assessments.

(7) The department shall establish, schedule, and arrange periodic retesting periods throughout the year for individuals who desire to repeat an assessment under this section. The department shall coordinate the arrangements for administering the repeat assessments and shall ensure that the retesting is made available at least within each intermediate district and, to the extent possible, within each district.

(8) A district shall provide accommodations to a pupil with disabilities for the assessments required under this section, as provided under section 504 of title V of the rehabilitation act of 1973, Public Law 93-112, 29 U.S.C. 794; subtitle A of title II of the Americans with disabilities act of 1990, Public Law 101-336, 42 U.S.C. 12131 to 12134; and the implementing regulations for those statutes.



(9) For the purposes of this section, the state board shall develop or select and approve assessment instruments to measure pupil performance in communications skills, mathematics, social studies, and science. The assessment instruments shall be based on the state board model core academic content standards objectives.

(10) Upon written request by the pupil's parent or legal guardian stating that the request is being made for the purpose of providing the pupil with an opportunity to qualify to take 1 or more postsecondary courses as an eligible student under the postsecondary enrollment options act, 1996 PA 160, MCL 388.511 to 388.524, the board of a district shall allow a pupil who is in at least grade 10 to take an assessment administered under this section without charge at any time the district regularly administers the assessment or during a retesting period established under subsection (7). A district is not required to include in an annual education report, or in any other report submitted to the department for accreditation purposes, results of assessments taken under this subsection by a pupil in grade 11 or lower until the results of that pupil's graduating class are otherwise reported.

(11) All assessment instruments developed or selected and approved by the state under any statute or rule for a purpose related to K to 12 education shall be objective-oriented and consistent with the state board model core academic content standards objectives.

(12) A person who has graduated from high school after 1996 and who has not previously taken an assessment under this section may take an assessment used for the purposes of this section, without charge to the person, at the district from which he or she graduated from high school at any time that district administers the assessment or during a retesting period scheduled under subsection (7) and have his or her scaled score on the assessment included on his or her high school transcript. If the person's scaled score on a subject area assessment falls within the range required under subsection (2) for a category established under subsection (2), the district shall also indicate on the person's high school transcript that the person has achieved state endorsement for that subject area.

(13) Not later than July 1 of each year until 2000, the department shall submit a comprehensive report to the legislature on the status of the assessment program under this section. The report shall include at least all of the following:

(a) The annual pupil assessment data.

(b) A description of the feedback provided to pupils, parents, and schools.

(c) A description of any significant alterations made in the program by the department or state board during the period covered by the report.

(d) Any recommendations by the department or state board for legislative changes to the program.

(e) An update of the reports of the assessment advisory committees of the state board.

(14) Pupils scheduled to graduate in 1998 who took the assessments used for the purposes of this section during the 1996-97 school year may repeat 1 or more of the assessments during the 1997-98 school year. The department, in cooperation with districts, shall make arrangements for repeat assessments to be available for these pupils in each district that operates a high school during the 1997-98 school year in time for these pupils to repeat the assessments before graduation. The repeat assessments may be administered at times other than regular school hours.

(15) A child who is a student in a nonpublic school or home school may take an assessment under this section. To take an assessment, a child who is a student in a home school shall contact the district in which the child resides, and that district shall administer the assessment, or the child may take the assessment at a nonpublic school if allowed by the nonpublic school. Upon request from a nonpublic school, the department shall supply assessments and the nonpublic school may administer the assessment.

(16) The purpose of the assessment under this section is to assess pupil performance in mathematics, science, social studies, and communication arts for the purpose of improving academic achievement and establishing a statewide standard of competency. The assessment under this section provides a common measure of data that will contribute to the improvement of Michigan schools' curriculum and instruction by encouraging alignment with Michigan's curriculum framework standards. These standards are based upon the expectations of what pupils should know and be able to do by the end of grade 11.

(17) As used in this section:

(a) "Communications skills" means reading and writing.

(b) "Social studies" means geography, history, economics, and American government.

**History:**Add. 1991, Act 118, Imd. Eff. Oct. 11, 1991;—Am. 1992, Act 148, Eff. Oct. 1, 1992;—Am. 1993, Act 175, Eff. Oct. 1, 1993;—Am. 1993, Act 336, Eff. Mar. 15, 1994;—Am. 1995, Act 130, Eff. Oct. 1, 1995;—Am. 1996, Act 161, Eff. July 1, 1996;—Am. 1996, Act 300, Eff. Oct. 1, 1996;—Am. 1997, Act 24, Imd. Eff. June 16, 1997;—Am. 1997, Act 176, Imd. Eff. Dec. 30, 1997.

388.1705Counting nonresident pupils in membership; procedures.

Sec. 105. (1) In order to avoid a penalty under this section, and in order to count a nonresident pupil residing within the same intermediate district in membership without the approval of the pupil's district of residence, a district shall comply with this section.

(2) Except as otherwise provided in subsection (3), a district shall determine by June 1 whether or not it will accept applications for enrollment by nonresident applicants residing within the same intermediate district for the next school year. If the district determines to accept applications for enrollment of a number of nonresidents, beyond those entitled to preference under this section, the district shall do all of the following:

(a) By June 15, publish the grades, schools, and special programs, if any, for which enrollment may be available to, and for which applications will be accepted from, nonresident applicants residing within the same intermediate district.

(b) At least until July 1, accept applications from nonresidents residing within the same intermediate district for enrollment in the available grades, schools, and programs.

(c) By July 15, using the procedures and preferences required under this section, determine which nonresident applicants will be allowed to enroll in the district and notify the parent or legal guardian of each nonresident applicant of whether or not the applicant may enroll in the district. The notification to parents or legal guardians of nonresident applicants accepted for enrollment shall contain notification of the date by which the applicant must enroll in the district and procedures for enrollment.

(3) If deadlines similar to those described in subsection (2) have been established in an intermediate district pursuant to a pilot intermediate district schools of choice program under former section 91, and if those deadlines are not later than the deadlines under subsection (2), the districts within the intermediate district may continue to use those deadlines.

(4) A district offering to enroll nonresident applicants residing within the same intermediate district may limit the number of nonresident pupils it accepts in a grade, school, or program, at its discretion, and may use that limit as the reason for refusal to enroll an applicant.

(5) A nonresident applicant residing within the same intermediate district shall not be granted or refused enrollment based on intellectual, academic, artistic, or other ability, talent, or accomplishment, or lack thereof, or based on a mental or physical disability, except that a district may refuse to admit a nonresident applicant if the applicant does

not meet the same criteria, other than residence, that an applicant who is a resident of the district must meet to be accepted for enrollment in a grade or a specialized, magnet, or intra-district choice school or program to which the applicant applies.

(6) A nonresident applicant residing within the same intermediate district shall not be granted or refused enrollment based on age, except that a district may refuse to admit a nonresident applicant applying for a program that is not appropriate for the age of the applicant.

(7) A nonresident applicant residing within the same intermediate district shall not be granted or refused enrollment based upon religion, race, color, national origin, sex, height, weight, marital status, or athletic ability, or, generally, in violation of any state or federal law prohibiting discrimination.

(8) A district may refuse to enroll a nonresident applicant if the applicant is, or has been within the preceding 2 years, suspended from another school or if the applicant has ever been expelled from another school.

(9) A district shall give preference for enrollment over all other nonresident applicants residing within the same intermediate district to pupils who were enrolled in and attended the district in the school year immediately preceding the school year in question and to other school-age children who reside in the same household as the pupil.

(10) If a nonresident pupil was enrolled in and attending school in a district as a nonresident pupil in the 1995-96 school year and continues to be enrolled continuously each school year in that district, the district shall allow that nonresident pupil to continue to enroll in and attend school in the district until high school graduation, without requiring the nonresident pupil to apply for enrollment under this section. This subsection does not prohibit a district from expelling a pupil described in this subsection for disciplinary reasons.

(11) If the number of qualified nonresident applicants eligible for acceptance in a school, grade, or program does not exceed the positions available for nonresident pupils in the school, grade, or program, the school district shall accept for enrollment all of the qualified nonresident applicants eligible for acceptance. If the number of qualified nonresident applicants residing within the same intermediate district eligible for acceptance exceeds the positions available in a grade, school, or program in a district for nonresident pupils, the district shall use a random draw system, subject to the need to abide by state and federal antidiscrimination laws and court orders and subject to preferences allowed by this section.

(12) If a district, or the nonresident applicant, requests the district in which a nonresident applicant resides to supply information needed by the district for evaluating the applicant's application for enrollment or for enrolling the applicant, the district of residence shall provide that information on a timely basis.

(13) If a district is subject to a court-ordered desegregation plan, and if the court issues an order prohibiting pupils residing in that district from enrolling in another district or prohibiting pupils residing in another district from enrolling in that district, this section is subject to the court order.

(14) This section does not require a district to provide transportation for a nonresident pupil enrolled in the district under this section or for a resident pupil enrolled in another district under this section. However, at the time a nonresident pupil enrolls in the district, a district shall provide to the pupil's parent or legal guardian information on available transportation to and from the school in which the pupil enrolls.

(15) If, in a particular state fiscal year, the total number of pupils enrolled and counted in membership in a district is less than 90% of the total number of pupils residing in the district who are enrolled and counted in membership in either that district or 1 or more other districts, the total amount of money allocated to that district under section 20 shall be adjusted so that the district receives a total allocation under section 20 equal to the amount the district would receive under section 20 if exactly 90% of the pupils residing in the district who are enrolled and counted in either that district or 1 or more other districts were enrolled and counted in membership in that district.

(16) A district may participate in a cooperative education program with 1 or more other districts or intermediate districts whether or not the district enrolls any nonresidents pursuant to this section.

(17) A district that, pursuant to this section, enrolls a nonresident pupil who is eligible for special education programs and services according to statute or rule, or who is a child with disabilities, as defined under the individuals with disabilities education act, title VI of Public Law 91-230, shall be considered to be the resident district of the pupil for the purpose of providing the pupil with a free appropriate public education. Consistent with state and federal law, that district is responsible for developing and implementing an individualized education plan annually for a nonresident pupil described in this subsection.

(18) If a district does not comply with this section, the district forfeits 10% of the total amount due to the district under section 20c.

(19) Upon application by a district, the superintendent of public instruction may grant a waiver for the district from a specific requirement under this section for not more than 1 year.

(20) If an intermediate district is operating under an intermediate district pilot schools of choice program established under former section 91 or as described in section 91a, and if the superintendent of public instruction determines that the program is substantially similar to intermediate district schools of choice under this section, the superintendent of public instruction may exempt the intermediate district and its constituent districts from this section for not more than 1 year.

(21) It is the intent of the legislature that this section will be reviewed before the 1999-2000 state fiscal year.

**History:**Add. 1996, Act 300, Imd. Eff. June 19, 1996;—Am. 1998, Act 553, Imd. Eff. Jan. 27, 1999.

**Compiler's note:**Former § 388.1705, which pertained to age of pupils counted in membership, was repealed by Act 175 of 1993, Eff. Oct. 1, 1993.

388.1705aCounting nonresident pupils in membership; applicability to district not operating all of grades K to 12.

Sec. 105a. Section 105(16) does not apply to a pupil residing in a district that does not operate all of grades K to 12 who is enrolled in a district other than the district of residence in a grade that is not operated by the district of residence.

**History:**Add. 1997, Act 24, Imd. Eff. June 16, 1997.

**Compiler's note:**Former § 388.1705a, which pertained to eligible applicant districts, was repealed by Act 336 of 1993, Eff. Oct. 1, 1994.

388.1705bIntermediate district operating under pilot schools of choice program.

Sec. 105b. Notwithstanding section 105(21), if an intermediate district is operating under an intermediate district pilot schools of choice program established under former section 91 or as described in section 91a, the intermediate district and its constituent districts are exempt from section 105.

**History:**Add. 1997, Act 24, Imd. Eff. June 16, 1997.

388.1706Pupils not counted in membership.

Sec. 106. A pupil enrolled in a public school program organized under federal or state supervision and in which the teaching costs are fully subsidized from federal or state funds shall not be counted in membership.

**History:**1979, Act 94, Eff. Oct. 1, 1979.

388.1707Allocation for adult education programs.

Sec. 107. (1) From the appropriation in section 11, there is allocated for 1997-98, for 1998-99, and for 1999-2000 an amount not to exceed \$80,000,000.00 each fiscal year for adult education programs authorized under this section.

(2) To be eligible to be a participant funded under this section, a person shall be enrolled in an adult basic education program, an adult English as a second language program, a general education development (G.E.D.) test preparation program, a job or employment related program, or a high school completion program, that meets the requirements of this section, and shall meet either of the following, as applicable:

(a) If the individual has obtained a high school diploma or a general education development (G.E.D.) certificate, the individual meets 1 of the following:

(i) Is less than 20 years of age on September 1 of the school year and is enrolled in the state technical institute and rehabilitation center.

(ii) Is less than 20 years of age on September 1 of the school year, is not attending an institution of higher education, and is enrolled in a job or employment related program through a referral by an employer.

(iii) Is enrolled in an English as a second language program.

(iv) Is enrolled in a high school completion program.

(b) If the individual has not obtained a high school diploma or G.E.D. certificate, is at least 20 years of age on September 1 of the school year.

(3) The amount allocated under subsection (1) shall be distributed as follows:

(a) For districts and consortia that received payments for 1995-96 under former section 107f and that received payments for 1996-97 under subsection (4) of this section as in effect in 1996-97, the amount allocated to each for 1997-98, for 1998-99, and for 1999-2000 shall be an amount each fiscal year equal to 36.76% of the amount the district or consortium received for 1995-96 under former section 107f.

(b) For districts and consortia that received payments under subsection (3) of this section as in effect for 1996-97, the amount allocated to each for 1997-98, for 1998-99, and for 1999-2000 shall be an amount each fiscal year equal to the product of the number of full-time equated participants actually enrolled and in attendance during the 1996-97 school fiscal year in the program funded under subsection (3) of this section as in effect for 1996-97 as reported to the department, audited, and adjusted according to subsection (10) of this section as in effect for 1996-97, multiplied by \$2,750.00.

(c) For districts and consortia that meet the conditions of both subdivisions (a) and (b), the amount allocated each fiscal year for 1997-98, for 1998-99, and for 1999-2000 shall be the sum of the allocations to the district or consortium under subdivisions (a) and (b).

(d) A district or consortium that received funding in 1996-97 under this section as in effect for 1996-97 may operate independently of a consortium or join or form a consortium for 1997-98, for 1998-99, or for 1999-2000. The allocation for 1997-98, for 1998-99, or for 1999-2000 to the district or the newly formed consortium under this subsection shall be determined by the department and shall be based on the proportion of the amounts specified in subdivision (a) or (b), or both, that are attributable to the district or consortium that received funding in 1996-97. A district or consortium described in this subdivision shall notify the department of its intention with regard to 1997-98, 1998-99, or 1999-2000 by October 1 of the affected fiscal year.

(4) A district that operated an adult education program in 1996-97 and does not intend to operate a program in 1997-98, 1998-99, or 1999-2000 shall notify the department by October 1 of the affected fiscal year of its intention. The funds intended to be allocated under this section to a district that does not operate a program in 1997-98, 1998-99, or 1999-2000 and the unspent funds originally allocated under this section to a district or consortium that subsequently operates a program at less than the level of funding allocated under subsection (3) shall instead be proportionately reallocated to the other districts described in subsection (3)(a) that are operating an adult education program in 1997-98, 1998-99, or 1999-2000 under this section.

(5) The amount allocated under this section per full-time equated participant is \$2,850.00 for a 450-hour program. The amount shall be proportionately reduced for a program offering less than 450 hours of instruction.

(6) An adult basic education program or an adult English as a second language program operated on a year-round or school year basis may be funded under this section, subject to all of the following:

(a) The program enrolls adults who are determined by an appropriate assessment to be below ninth grade level in reading or mathematics, or both, or to lack basic English proficiency.

(b) The program tests individuals for eligibility under subdivision (a) before enrollment and tests participants to determine progress after every 90 hours of attendance, using assessment instruments approved by the department.

(c) A participant in an adult basic education program is eligible for reimbursement until 1 of the following occurs:

(i) The participant's reading and mathematics proficiency are assessed at or above the ninth grade level.



(ii) The participant fails to show progress on 2 successive assessments after having completed at least 450 hours of instruction.

(d) A funding recipient enrolling a participant in an English as a second language program is eligible for funding according to subsection (10) until the participant meets 1 of the following:

(i) The participant is assessed as having attained basic English proficiency.

(ii) The participant fails to show progress on 2 successive assessments after having completed at least 450 hours of instruction. The department shall provide information to a funding recipient regarding appropriate assessment instruments for this program.

(7) A general education development (G.E.D.) test preparation program operated on a year-round or school year basis may be funded under this section, subject to all of the following:

(a) The program enrolls adults who do not have a high school diploma.

(b) The program shall administer a G.E.D. pre-test approved by the department before enrolling an individual to determine the individual's potential for success on the G.E.D. test, and shall administer other tests after every 90 hours of attendance to determine a participant's readiness to take the G.E.D. test.

(c) A funding recipient shall receive funding according to subsection (10) for a participant, and a participant may be enrolled in the program until 1 of the following occurs:

(i) The participant passes the G.E.D. test.

(ii) The participant fails to show progress on 2 successive tests used to determine readiness to take the G.E.D. test after having completed at least 450 hours of instruction.

(8) A high school completion program operated on a year-round or school year basis may be funded under this section, subject to all of the following:

(a) The program enrolls adults who do not have a high school diploma.

(b) A funding recipient shall receive funding according to subsection (10) for a participant in a course offered under this subsection until 1 of the following occurs:

(i) The participant passes the course and earns a high school diploma.

(ii) The participant fails to earn credit in 2 successive semesters or terms in which the participant is enrolled after having completed at least 900 hours of instruction.

(9) A job or employment-related adult education program operated on a year-round or school year basis may be funded under this section, subject to all of the following:

(a) The program enrolls adults referred by their employer who are less than 20 years of age, have a high school diploma, are determined to be in need of remedial mathematics or communication arts skills or, for 1997-98 only, vocational skills, and are not attending an institution of higher education.

(b) An individual may be enrolled in this program and the grant recipient shall receive funding according to subsection (10) until 1 of the following occurs:

(i) The individual achieves the requisite skills as determined by appropriate assessment instruments administered at least after every 90 hours of attendance.

(ii) The individual fails to show progress on 2 successive assessments after having completed at least 450 hours of instruction. The department shall provide information to a funding recipient regarding appropriate assessment instruments for this program.

(10) A funding recipient shall receive payments under this section in accordance with the following:

(a) Ninety percent for enrollment of eligible participants.

(b) Ten percent for completion of the adult basic education objectives by achieving an increase of at least 1 grade level of proficiency in reading or mathematics; for achieving basic English proficiency; for passage of the G.E.D. test; for passage of a course required for a participant to attain a high school diploma; or for completion of the course and demonstrated proficiency in the academic skills to be learned in the course, as applicable.

(11) As used in this section, "participant" means the sum of the number of full-time equated individuals enrolled in and attending a department-approved adult education program under this section, using quarterly participant count days on the schedule described in section 6(7)(b).

(12) A person who is not eligible to be a participant funded under this section may receive adult education services upon the payment of tuition. In addition, a person who is not eligible to be served in a program under this section due to the program limitations specified in subsection (6), (7), (8), or (9) may continue to receive adult education services in that program upon the payment of tuition. The tuition level shall be determined by the local or intermediate district conducting the program.

(13) An individual who is an inmate in a state correctional facility shall not be counted as a participant under this section.

(14) A district shall not commingle money received under this section or from another source for adult education purposes with any other funds of the district. A district receiving adult education funds shall establish a separate ledger account for those funds. This subsection does not prohibit a district from using general funds of the district to support an adult education or community education program.

(15) From the general fund appropriation in section 11, there is allocated for 1997-98 only an amount not to exceed \$250,000.00 for a grant to focus: hope for a fast-track adult education program.

**History:**Add. 1996, Act 300, Imd. Eff. June 19, 1996;—Am. 1997, Act 24, Imd. Eff. June 16, 1997;—Am. 1997, Act 93, Eff. Oct. 1, 1997;—Am. 1997, Act 142, Imd. Eff. Nov. 19, 1997;—Am. 1998, Act 339, Imd. Eff. Oct. 13, 1998.

**Compiler's note:**Former § 388.1707, which pertained to adult education programs, was repealed by Act 336 of 1993, Eff. Oct. 1, 1994.

388.1707a, 388.1707bRepealed.1995, Act 130, Eff. Oct. 1, 1995.

**Compiler's note:**The repealed sections pertained to economic development job training and jobs grant program.

388.1707c, 388.1707dRepealed.1993, Act 336, Eff. Oct. 1, 1994.

**Compiler's note:**The repealed sections pertained to literacy project grants and adult education categorical grants.

388.1707eRepealed.1995, Act 130, Eff. Oct. 1, 1995.

**Compiler's note:**The repealed section pertained to adult education programs.

388.1707fRepealed.1996, Act 300, Eff. Oct. 1, 1996.

**Compiler's note:**The repealed section pertained to adult education programs.

388.1708Repealed.1997, Act 93, Eff. Oct. 1, 1997.

**Compiler's note:**The repealed section pertained to adult education programs.

388.1709Providing appropriate instructional services to pupil requiring hospitalization or confinement at home.

Sec. 109. (1) Subject to subsection (2), in order to receive funds under this act, each district or intermediate district shall provide appropriate instructional services, as determined by the district or intermediate district, to an enrolled pupil who is certified by the pupil's attending physician as having a medical condition that requires the pupil to be hospitalized or confined to his or her home during regular school hours and that is expected to require the hospitalization or confinement for a period longer than 5 school days. The district or intermediate district may provide the services itself or may contract with an intermediate district, a hospital, a treatment center, or another district to provide the services. In choosing a provider for the instructional services, the district or intermediate district shall

consider which of those potential providers is best able to deliver the appropriate instructional services. The district or intermediate district shall pay reasonable costs as agreed upon between the district or intermediate district and the provider for services provided to a pupil under this section.

(2) A district or intermediate district is required to provide instructional services under subsection (1) to a pupil placed in a hospital, treatment center, or other treatment facility without the district's or intermediate district's prior knowledge only if the district or intermediate district is notified of the pupil's placement by the hospital, treatment center, facility, or the pupil's parent or legal guardian. Upon being notified, the district or intermediate district shall make arrangements to provide instructional services under subsection (1) within 3 school days after being notified.

(3) Not later than October 15 of each odd numbered year, the department shall prepare and distribute to each district and intermediate district a written explanation of the operation of this section and the respective duties of all affected parties. The department shall provide a copy of the explanation to any other person upon request.

**History:**Add. 1991, Act 118, Imd. Eff. Oct. 11, 1991;—Am. 1993, Act 175, Eff. Oct. 1, 1993;—Am. 1994, Act 283, Eff. Oct. 1, 1994.